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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,944	04/05/2001	Robert Mann Bradbury	912.39939X00	4370

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EXAMINER

KEENAN, JAMES W

ART UNIT PAPER NUMBER

3652

DATE MAILED: 02/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/825,944

Applicant(s)

BRADBURY ET AL.

Examiner

James Keenan

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 and 23-27 is/are allowed.
- 6) ☒ Claim(s) 1, 3-18, 20-22, 28 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 3652

1. Although applicant's response to the restriction requirement of 9/12/02 was incomplete in that it did not include an election of the invention to be examined (37 CFR 1.143), that restriction requirement is nevertheless vacated. An Office action on the merits of all claims follows.

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the city and either state or foreign country of residence of each inventor. The residence information may be provided on either on an application data sheet or supplemental oath or declaration.

3. The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

The following order or arrangement is preferred in framing the specification and, except for the reference to the drawings, each of the lettered items should appear in upper case, without underling or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

(a) Title of the Invention.

Art Unit: 3652

- (b) Cross-Reference to Related Applications.
 - (c) Statement Regarding Federally Sponsored Research or Development.
 - (d) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on compact disc (see 37 CFR 1.52(e)(5)).
 - (e) Background of the Invention.
 - 1. Field of the Invention.
 - 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
 - (f) Brief Summary of the Invention.
 - (g) Brief Description of the Several Views of the Drawing(s).
 - (h) Detailed Description of the Invention.
 - (I) Claim or Claims (commencing on a separate sheet).
 - (j) Abstract of the Disclosure (commencing on a separate sheet).
 - (k) Drawings.
 - (l) Sequence Listing, if on paper (see 37 CFR 1.821-1.825).
4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3652

5. Claims 1, 3-18, 20-22, and 28-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 6, the phrase "including means" has been repeated.

In claim 11, line 4, it is not clear to what element "a stoppage" refers.

Claims 13 and 29 are not patentably distinct.

In claim 20, line 3, it is not clear what is meant by "level of articles ... from an unloading container".

In claim 21, line 2, although the term "unloading container" has antecedent basis in claim 20, it has no such basis in claim 19 from which this claim alternately depends.

The remaining claims are rejected only because of their dependency on an indefinite claim.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 3, 5-7, 13-15, 17-18, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Hinchcliffe et al (US 4,303,366, cited by applicant).

Art Unit: 3652

Hinchcliffe et al show a carrier 16, 18, 20 for receiving full container 14 in a first receiving orientation and moving means 23 for independently rotating and translating the carrier (col. 3, lines 46-52) to a second unloading orientation where the contents of the container are unloaded.

Re claim 7, note elevator 38 which receives an unloaded container from the carrier at an intermediate position.

Re claims 13-15, note conveying means 26, 28 which extend across an open end of the container except at a conveying path for the articles to be unloaded, as clearly seen in fig. 3.

8. Claims 1, 3, and 5-8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lodi et al (US 4,575,301, cited by applicant).

9. Claims 1, 3-6, and 8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schmermund (US 3,190,478, cited by applicant).

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3652

11. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hinchcliffe et al, Lodi et al, or Schmermund.

Hinchcliffe et al, Lodi et al, and Schmermund do not show the position at which the translating means locates the carrier at the unloading position to be determined by reference to a dimension of the container or its contents.

Nevertheless, it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified any of these references with such a feature, as this would allow different sizes or types of containers and/or articles to be unloaded, particularly since no specific *means for determining a dimension* has been disclosed.

Re claim 10, although the references do not explicitly disclose the initial movement of the container away from the receiving position to include both translational and rotational components, the controls necessary to effect such a movement are inherent. Therefore, to have operated any of the references in such a manner would have been an obvious design expediency if the nature of the articles to be unloaded warranted this movement.

Re claim 11, to have included in either the translating or rotating means a means for moving the carrier to a "preferred position", as broadly claimed, following a stoppage, is considered an obvious and well known operational safety feature

12. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hinchcliffe et al in view of Hinchcliffe et al (US 3,985,252).

Art Unit: 3652

Although Hinchcliffe et al ('366) show photocell detector 42 which can be used to control the rotating means and stack delivery conveyors 32, 34, thereby maintaining a desirable level of articles in the conveying path, there is no explicit disclosure that such a level is the same as that of the conveying means.

Hinchcliffe et al ('252) show a similar apparatus in the same environment wherein various controls are used to ensure that the level of articles 19' in a conveying path remains constant with that of the conveyors.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Hinchcliffe et al ('366) with more sophisticated control means to maintain the level of articles in the conveying path constant with the conveyors, as shown by Hinchcliffe et al ('252), as this would simply be an art recognized expediency.

13. Claims 19 and 23-27 are allowed.

14. Claims 20-22 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

15. Claims 12 and 28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Art Unit: 3652

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 308-2559.

The fax phone number for the organization where this application or proceeding is assigned is 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1113.

jwk

February 10, 2003


JAMES W. KEENAN
PRIMARY EXAMINER